

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

CHARLES H. BOOTH,

Plaintiff,

v.

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW
YORK; CHURCH OF IMMACULATE HEART OF
MARY a/k/a THE PARISH OF THE IMMACULATE
HEART OF MARY a/k/a IMMACULATE HEART OF
MARY SCHOOL; and EDWIN GAYNOR,

Defendants.

Index No.: _____

Date Index No. Purchased:
November 19, 2019

SUMMONS

Plaintiff Designates:
WESTCHESTER COUNTY as
the place of trial.

Venue is based on one
Defendants' residence pursuant to
CPLR §§ 503(a), (c), and (d).

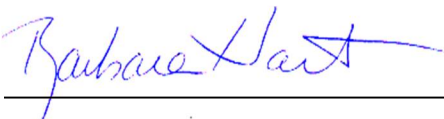
Child Victims Act Proceeding
22 NYCRR 202.72

TO THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer
the Complaint, a copy of which is hereby served upon you, and to serve a copy of your
Answer to the Complaint upon the undersigned attorneys listed below within twenty
(20) days after the service of this Summons, exclusive of the day of service (or within
thirty (30) days after the service is complete if this Summons is not personally delivered
to you within the State of New York); and in the case of your failure to appear or answer,
judgment by default will be taken against you for the relief demanded herein.

Dated: White Plains, New York
November 19, 2019

LOWEY DANNENBERG, P.C.

By: 

Barbara J. Hart
Scott V. Papp
Samantha Breitner
44 South Broadway, Suite 1100
White Plains, NY 10601-2301
Telephone: (914) 997-0500
Facsimile: (914) 997-0035
Email: bhart@lowey.com
spapp@lowey.com
sbreitner@lowey.com

Counsel for Plaintiff Charles H. Booth

DEFENDANTS' ADDRESSES:

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK
1011 FIRST AVENUE
NEW YORK, NY 10022

CHURCH OF IMMACULATE HEART OF MARY A/K/A THE PARISH OF THE
IMMACULATE HEART OF MARY A/K/A IMMACULATE HEART OF MARY SCHOOL
8 CARMAN ROAD
SCARSDALE, NY 10583

EDWIN GAYNOR,
15 MAPLE PLACE, APT. 6B
OSSINING, NY 10562

**SUPREME COURT OF THE STATE OF NEW YORK
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CHARLES H. BOOTH,

Plaintiff,

v.

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW
YORK; CHURCH OF IMMACULATE HEART OF
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JURY TRIAL DEMANDED

**Child Victims Act Proceeding
22 NYCRR 202.72**

COMPLAINT

Plaintiff Charles H. Booth (“Plaintiff”), by and through his attorneys, Lowey
Dannenberg, P.C., respectfully alleges for his Complaint against Defendants The Roman
Catholic Archdiocese of New York (“NY Archdiocese”); Church of Immaculate Heart of Mary
a/k/a The Parish of the Immaculate Heart of Mary a/k/a Immaculate Heart of Mary School
(“IHM” or “Immaculate Heart of Mary”); and Edwin Gaynor (“Gaynor”) (collectively together
“Defendants”), and alleges upon personal knowledge and, where stated, upon information and
belief, as follows:

INTRODUCTION

1. From approximately 1964 to 1965, Gaynor, a childrens’ physical education
teacher and sports coach at IHM, sexually abused Plaintiff as a child.

2. The NY Archdiocese knew for decades that its employees were using their
positions within the NY Archdiocese to groom and to sexually abuse children. Despite that

knowledge, the NY Archdiocese failed to take reasonable steps to protect children from being sexually abused and actively concealed the abuse through overt denials and by moving accused employees from facility to facility.

3. In April of 2019, following decades of denial and cover-up, the NY Archdiocese released a list of 120 employees that it determined had been credibly accused of sexual abusing children. Based on the NY Archdiocese's years of wrongful conduct, a reasonable person could and would conclude that it knowingly and recklessly disregarded the abuse of children and chose to protect its reputation and wealth over those who deserved protection. The result is not surprising: hundreds, if not thousands, of children were sexually abused by employees who served the NY Archdiocese. The Plaintiff in this lawsuit is one of those children who was sexually abused because of the NY Archdiocese's wrongful conduct.

4. This action is brought by Plaintiff Booth who was just a young boy at age 8 to 9 when he was sexually and emotionally abused by Gaynor. While the abuse occurred, Defendants were generally negligent in that they employed Gaynor and gave him access to children. This action arises out of the clandestine abuse perpetrated by Gaynor.

PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

5. This Complaint is filed pursuant to the Child Victims Act (CVA) 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440), CPLR 214-G, and 22 NYCRR 202.72. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, each plaintiff's claims were time barred the day they turned 22 years old. The enactment of the CVA allows plaintiffs, for the first time in their lives, to pursue restorative justice in New York State.

PARTIES

A. Plaintiff

6. Plaintiff Booth resided in Scarsdale, New York, while a student at IHM.
7. Plaintiff was sexually abused as a minor by Gaynor.
8. Plaintiff was sexually molested and emotionally abused by Gaynor at the school facilities.
9. Plaintiff currently resides in Florida.

B. Defendants

10. Whenever reference is made to any Defendant entity, such reference includes that entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

11. Defendant Roman Catholic Archdiocese of New York ("NY Archdiocese") is incorporated as a domestic not-for profit corporation in the State of New York and maintains its principal place of business at 1011 First Avenue, New York, New York, 10022.

12. Defendant NY Archdiocese is the Roman Catholic diocese covering the ecclesiastical geographic jurisdictions of the Boroughs of Manhattan, the Bronx, and Staten Island, and the Counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester.

13. The NY Archdiocese operates its affairs as both a corporate entity and as the organization known as the Archdiocese of New York. Both of these entities and all other affiliated corporations and entities controlled by the Archbishop are included in this Complaint

as the “NY Archdiocese.” The NY Archdiocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services.

14. Upon information and belief, at all relevant times, Defendant Immaculate Heart of Mary School is located at 201 Boulevard, Scarsdale, New York 10583.

15. Immaculate Heart of Mary School is affiliated with Immaculate Heart of Mary Church, which is located at 8 Carman Road in Scarsdale, New York, 10583.

16. The Immaculate Heart of Mary School is “designed to stimulate students to explore new horizons, expand creativity, experience different cultures, broaden their base of knowledge, and increase their learned skills.”

17. The Immaculate Heart of Mary School offers pre-K through 8th grade.

18. Students at Defendant IHM participate in Mass and other liturgies at the Defendant the Immaculate Heart of Mary Church.

19. Defendant Gaynor was a physical education teacher and coach at Immaculate Heart of Mary School.

20. Upon information and belief, Gaynor resides in White Plains, New York.

JURISDICTION AND VENUE

21. Jurisdiction of this Court is found upon C.P.L.R. § 301 as Defendants’ principal places of business are in New York and because the unlawful conduct complained of herein occurred in New York.

22. Jurisdiction of this Court is found upon C.P.L.R. § 302 in that Defendants transact business within the State and committed the acts described here within this State.

23. Venue lies in this Court pursuant to C.P.L.R. § 503(a), (c) and (d) and other laws in that one or more Defendants are authorized to transact business in this State and have their principal office located in the State of New York and County of Westchester; Westchester County is the location where the events giving rise to the claim occurred; and C.P.L.R. §509 in that Plaintiff has designated Westchester County for the trial.

FACTUAL ALLEGATIONS

24. At all times material, Gaynor was a physical education teacher and coach who worked for and was employed by IHM.

25. Defendants had custody of Plaintiff during his schooling and activities and were entrusted with Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

26. From approximately 1964 to 1965, when Plaintiff was approximately 8 to 9 years old, Gaynor engaged in unpermitted sexual abuse of Plaintiff that traumatized Plaintiff and continues to haunt and disturb him.

27. Booth was an avid athlete and was very involved in sports.

28. Booth looked up to Gaynor as an authority figure and sports leader and as the person who had control over whether he played on teams in school.

29. When Plaintiff was approximately in 2nd and 3rd grade, Gaynor lured Booth into his office to give him a trophy.

30. Booth went into Gaynor's office.

31. Gaynor asked Booth to sit in his lap in Gaynor's bit chair in his office.

32. The locker room was right outside Gaynor's office.

33. Gaynor grabbed a trophy that was meant for a different team and peeled the sticker which listed a different team's name off the trophy.

34. While Booth was sitting in Gaynor's lap, Gaynor handed Booth the trophy that was not meant for him

35. Gaynor then proceeded to molest Booth by fondling his genitals in a manner to try to give Booth an erection.

36. Booth can still recall Gaynor talking to him and breathing on him while Gaynor molested Booth.

37. On the playground, the boys at school would sing "Gaynor is a mo, Gaynor is a mo, hi-ho the derry-o, Gaynor is a mo" to the tune of Farmer in the Dell.

38. Booth was always bothered that Gaynor coached at other schools afterwards.

39. Defendants should have taken action to prevent Gaynor from interacting with children without supervision. The abuse by Gaynor caused Booth serious psychological injury, physical problems, emotional distress and lasting damage.

40. Defendants had the authority, duty, and the ability to prevent Gaynor from sexually abusing children such as Plaintiff Booth. Defendants failed to do so.

CAUSES OF ACTION

COUNT I

Negligence

(Against All Defendants)

41. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

42. Each Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

43. Defendant NY Archdiocese and IHM owed Plaintiff a duty of care because each Defendant had a special relationship with Plaintiff.

44. Defendants also had a duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children in the Archdiocese of New York to properly train and supervise its employees. This special relationship arose because of the high degree of vulnerability of the children entrusted to their care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendants had a duty to establish measures of protection for infant minors.

45. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because of their oversight and employment of Gaynor.

46. Defendants also had a duty to take reasonable steps to prevent Gaynor from using the tasks, premises, and instrumentalities of his position to target and sexually abuse children, including Booth.

47. Defendants owed Plaintiff a duty of reasonable care because Gaynor brought Plaintiff onto Immaculate Heart of Mary premises; undertook custody of minor children, including Plaintiff; promoted their facilities and programs as being safe for children; held their agents, including Gaynor, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Gaynor, to spend time with, interact with, and recruit children.

48. By accepting custody of the minor Plaintiff, Defendants established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, Defendants entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the Plaintiff, Defendants also held a position of empowerment over Plaintiff. Further, Defendants, by holding themselves out as

being able to provide a safe environment for children, solicited and/or accepted this position.

Defendants, through its employees, put the minor Plaintiff at risk for sexual abuse.

49. By establishing and/or operating the NY Archdiocese and Immaculate Heart of Mary, holding their facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, and providing a reasonably safe environment for children. Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendants had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

50. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendants invited Plaintiff onto their property and Gaynor posed a dangerous condition on Defendants' property.

51. Each Defendant breached its duties to Plaintiff. Defendants failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their facilities as safe. Defendants' breach of their duties include, but are not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures in place to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train the employees at institutions and programs within Defendants' geographical confines, failure to train the parishioners within Defendants' geographical confines about the dangers of sexual abuse by employees, failure to have any

outside agency test their safety procedures, failure to protect the children in their programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train their employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

52. Defendants also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Gaynor posed and the risks of child sexual abuse in Catholic institutions. Despite the fact that students knew Gaynor was abusing boys and therefore the school knew or should have known the same, Defendants failed to prevent and failed to warn Plaintiff or his mother of their knowledge.

53. Defendants additionally violated a legal duty by failing to report known and/or suspected abuse of children by Gaynor and/or its other agents to the police and law enforcement.

54. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Gaynor was not fit to work with children. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Gaynor's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendants knew or should have known that they did not have sufficient information about whether or not Gaynor was safe.

55. Defendants knew or should have known that Defendants had numerous agents who had sexually molested children. Defendants knew or should have known that child molesters have a high rate of recidivism. They knew or should have known that there was a specific danger of child sex abuse for children participating in their youth programs.

56. However, despite this knowledge, Defendants negligently deemed that Gaynor was fit to work with children.

57. Defendants' actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child at its facilities, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Gaynor had access to through Defendants' facilities, Gaynor gained the opportunity to abuse Plaintiff at his apartment. At all times Plaintiff was a foreseeable victim and Defendants failed in their obligation to keep him safe.

58. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendants.

COUNT II

Negligent Training and Supervision of Employees **(Against NY Archdiocese and Immaculate Heart of Mary)**

59. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

60. At all times material, Gaynor was employed by Defendants and was under each Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Gaynor engaged in the wrongful conduct while acting in the course and scope of his employment with Defendants and/or accomplished the sexual abuse by virtue of his job-created authority.

61. Defendants had a duty, arising from their employment of Gaynor, to ensure that he did not sexually molest children.

62. Further, Defendants owed a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

63. Defendants were negligent in the training, supervision, and instruction of their employees. Defendants failed to timely and properly educate, train, supervise, and/or monitor their agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed. Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Gaynor and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Gaynor's sexual abuse of Plaintiff. In failing to properly supervise Gaynor, and in failing to establish such training procedures for employees and administrators, Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

64. As a direct result of the foregoing, Plaintiff was sexually abused and sustained emotional, physical and psychological injuries. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendants in the training and/or supervising of its employees.

COUNT III
Negligent Retention of Employees
(Against NY Archdiocese and Immaculate Heart of Mary)

65. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

66. At all times material, Gaynor was employed by Defendants and was under each Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

67. Defendants negligently retained Gaynor with knowledge of Gaynor's propensity for the type of behavior which resulted in Plaintiff's injuries in this action. Defendants knew of, or failed to investigate, Gaynor's past history of sexual abuse and, through the exercise of reasonable diligence, should have known of Gaynor's propensity for child sexual abuse.

Defendants either made an appropriate investigation of Gaynor and failed to act on their findings or and failed to do so. An appropriate investigation would have revealed the unsuitability of Gaynor for continued employment and it was unreasonable for Defendants to retain Gaynor in light of the information they knew or should have known.

68. Defendants negligently retained Gaynor in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendants taken reasonable care.

69. In failing to timely remove Gaynor from coaching minors on school property or working with children or terminate the employment of Gaynor, Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

70. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendants in the retention of its employees.

COUNT IV
Outrage and Intentional Infliction of Emotional Distress
(Against All Defendants)

71. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

72. Defendants engaged in reckless, extreme, and outrageous conduct by providing Gaynor with access to children, including Plaintiff Booth, despite knowing or in willful blindness that he would likely use his position to groom and to sexually abuse children, including Booth. Their misconduct was so shocking and outrageous that it exceeds the reasonable bounds

of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the consequences that would follow.

73. As a result of this reckless, extreme, and outrageous conduct, Gaynor gained access to Booth and sexually and emotionally abused him.

74. Defendants knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury and Booth did in fact suffer severe emotional and psychological distress and personal physical injury as a result, including severe mental anguish, depression; attempted suicides, substance abuse, humiliation and emotional and physical distress.

COUNT V
Negligent Infliction of Emotional Distress
(Against All Defendants)

75. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

76. Defendants owed a duty of care to Plaintiff not to place Gaynor in a setting that would foreseeably pose a danger to Plaintiff.

77. Defendants knew or should have known that Gaynor was a danger to children before Gaynor sexually assaulted Plaintiff.

78. Defendants knew or should have known that Gaynor had a propensity to engage in conduct with children that was sexual in nature before Gaynor sexually assaulted Plaintiff.

79. Defendants breached their duties to Plaintiff by failing to use reasonable care. Defendants' failures include, but are not limited to, failing to properly supervise Gaynor, failing to properly supervise Plaintiff, and failing to protect Plaintiff from a known danger.

80. The negligence and conduct of Defendants unreasonably endangered the physical

safety of Plaintiff.

81. The aforementioned negligence of Defendants was a direct and proximate cause of the extreme emotional and psychological harm and distress suffered by Plaintiff and unreasonably endangered Plaintiff's safety.

82. As a direct and proximate result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

COUNT VI
Assault
(Against All Defendants)

83. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

84. Gaynor intentionally placed Plaintiff Booth in apprehension of imminent harmful and offensive conduct.

85. Defendant Immaculate Heart of Mary is liable for the conduct of Gaynor under the law of vicarious liability, including the doctrine of *respondeat superior*.

86. Defendant NY Archdiocese is liable for the conduct of Gaynor under the law of vicarious liability, including the doctrine of *respondeat superior*.

87. As a direct result of conduct described herein, Plaintiff has suffered the injuries and damages described herein.

88. The conduct of Defendants was both reckless and outrageous, entitling Plaintiff to an award of punitive damages.

COUNT VII
Premises Liability
(Against NY Archdiocese and Immaculate Heart of Mary)

89. Plaintiff re-alleges and incorporates by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

90. Defendants owed Plaintiff a duty to protect Plaintiff from harm because the Defendants invited Plaintiff onto their property.

91. Gaynor posed a dangerous condition on the Defendants' property.

92. Defendants allowed Gaynor to remain on its property even though it knew or should have known of Gaynor's dangerous sexual propensities.

93. Gaynor was dangerous, unsafe, and posed a risk of serious injury to any persons who were lawfully in and about said area.

94. Defendants knew or should have known of the danger posed by Gaynor, and despite said notice, Defendants failed, refused, and/or neglected to remove, reassign, or restrict Gaynor's access to children, and was otherwise careless and negligent such that a great risk of serious injury to persons who are lawfully in and about said area was caused and/or allowed to exist.

95. Defendants knew or should have known that Gaynor posed an unreasonable risk of harm and a foreseeable danger to Plaintiff.

96. Defendants knew or should have known that Gaynor was a danger to children before Gaynor sexually assaulted Plaintiff.

97. Defendants knew or should have known that Gaynor was not fit to work with children and had a propensity to engage in conduct with children that was sexually abusive in nature before Gaynor sexually abused Plaintiff.

98. As a direct and proximate result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages, and for any other relief the Court deems appropriate, including punitive damages.

The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

Dated: White Plains, New York
November 19, 2019

LOWEY DANNENBERG, P.C.

By: _____



Barbara J. Hart
Scott V. Papp
Samantha Breitner
44 South Broadway, Suite 1100
White Plains, NY 10601-2301
Telephone: (914) 997-0500
Facsimile: (914) 997-0035
Email: bhart@lowey.com
spapp@lowey.com
sbreitner@lowey.com

Counsel for Plaintiff Charles H. Booth